

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

WHITE PROPERTIES, INC., d/b/a VALLEY
CONTRACTING COMPANY

Employer

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL NO. 49¹

Petitioner

Case 18-RC-16450

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

¹ Petitioner's name appears as amended at the hearing.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.²

3. The labor organization involved claims to represent certain employees of the Employer.

4. Petitioner seeks to represent a unit of employees, as amended at the hearing, comprised of all full-time and regular part-time heavy equipment operators and mechanics employed by the Employer in and out of its Grand Forks, North Dakota facility, excluding laborers, finishers, tandem truck drivers, all other employees, guards and supervisors as defined by the Act. The Employer contends that the only appropriate unit should include not only the heavy equipment operators and mechanics, but also all other employees it employs, excluding office clerical employees, guards and supervisors as defined by the Act. The other employees that the Employer would include are drivers of tandem trucks, finishers, skilled laborers, semi-skilled laborers and laborers. The record includes a contract that expired August 31, 1995, which bound the Employer to recognize Petitioner for certain of its employees, although the record is unclear which employees were included in the unit. The contract was negotiated by the Associated General Contractors of North Dakota. No collective-bargaining relationship has existed since the expiration of that contract.

The Employer is an asphalt and concrete paving contractor. It contracts to perform asphalt and concrete paving for municipal streets and parking lots in Grand

² The Employer, White Properties, Inc., d/b/a Valley Contracting Company, is a North Dakota corporation with an office and place of business in Grand Forks, North Dakota. The Employer is engaged in commercial concrete and asphalt paving and the manufacture and sale of ready mix concrete. During the preceding 12 months, a representative period, the Employer purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of North Dakota.

Forks, North Dakota; East Grand Forks, Minnesota; and an air base near Grand Forks. The Employer does not currently consider itself to be a heavy highway contractor because it limits its work locations to municipalities and the air base. The Employer has between four and six jobs underway at any time during the street construction season. The most senior executive at the Grand Forks location is Vice President and Area Manager James McMenamy. Reporting to McMenamy is Leonard Tandeski, who the Employer contends is general superintendent and a supervisor within the meaning of the Act. On the other hand, Petitioner contends that Tandeski is not a supervisor and should be included in the unit.

The Employer employs 12 individuals in the operator classification. They operate blades, back hoes, loaders, tractors with box scrapers, the bituminous plant, dozers, compaction equipment, wet saws, curb machines, paver screeds, and brooms (equipment that sweeps pavement to clean it). Each operator is assigned to a specific type of equipment, which is the operator's principal function, and the operators run other types of equipment as needed and when they are not operating the equipment they are specifically assigned to. The 12 operators are specifically assigned the following jobs: blade operator, bituminous paver operator, bituminous plant operator, bituminous roller/loader operator, wet saw operator, curb machine operator, front-end loader operator, tractor box scrape operator, tractor loader, paver and screed operator, dozer and loader operator, and general operator.

The Employer also employs about seven dump truck drivers (tandem), five finishers, four skilled laborers, five semi-skilled laborers, and 13 laborers. The main responsibility of the drivers is to haul product. Finishers are responsible for the

tolerance of a slab—that is, whether a slab meets specifications. Skilled laborers set the string lines for curb and gutters, drill bars for rebar in curbs, and assist with cleanup. Semi-skilled laborers are principally responsible for sealing cracks and joints and cleaning up jobs. Laborers' work includes cleanup of projects.

Employees are assigned to one of eight crews. Not all tandem truck drivers are assigned to a crew. Each crew is led by a foreman. Employees in different classifications are dispersed among the crews. Thus, for example, the curb and gutter crew includes a foreman, two operators, a finisher, and a laborer. Another crew (asphalt) includes a foreman, Robert Sorlien (who is also an operator); four operators; a tandem truck driver; and a laborer.³ Another example is the paving crew, which includes a foreman, one operator, two finishers, one skilled laborer, and three laborers. Generally, at any given time, there is one crew on a project; but as one crew completes its work, another starts its work. For example, for a paving project, the curb and gutter crew would be on a project first, followed by the paving crew, then the seal crew, and finally a clean-up crew. Crew foremen are the persons of highest authority on behalf of the Employer for each crew, unless Tandeski or McMenamy are at the site. Crew foremen make sure the crew is performing work properly, that necessary equipment is at the work site, and that job specifications are followed. Crew foremen determine the order of work and, according to the Employer, can hire, fire, discipline, and grant time off for employees on their crews.

³ The Employer, contrary to Petitioner, contends that because Sorlien is a foreman, he is a supervisor within the meaning of the Act.

According to unrebutted testimony offered by the Employer, at least some operators also assist with other jobs. For example, operator Dale Michalski also sets string line (skilled laborer work). Operator Adele Betts runs the wet saw less than 50 percent of her work time. The rest of the time she assists her tar crew coworkers in the sealing of joints and other jobs. Curb machine operator Chad Bartholomew operates the curb machine less than 40 percent of his time. He also runs a tractor and compaction equipment, sets string line for curb and gutters, and does other common laborer work. Although the amount of time varies, each operator spends some time performing functions assigned to other classifications. Likewise, finishers, skilled and semi-skilled laborers regularly operate tractors, compaction equipment and brooms, while laborers operate small tractors and brooms. However, it does not appear that employees other than operators run equipment such as the blade, curb machines, wet saws or paver screeds, or operate the bituminous plant.

During the work season, all employees work 55 hours each week. All members of a crew work the same hours. All employees receive the same benefits, abide by the same work rules, and have the same pay periods. The exceptions are four operators, Leonard Tandeski, and foreman Robert Sorlien. All six are apparently members of Petitioner, and the Employer pays them benefits consistent with those in contracts Petitioner has with other contractors. The four operators also receive wages equal to union scale. According to the Employer, a number of its employees, including operators, started out as laborers or in lesser skilled classifications and, with on-the-job training, moved up. For example, operators Dale Schiller, Lawrence Miller, and William

Meagher started as laborers, and were at one time tandem truck drivers. Operator Thomas Flores started as a finisher, and now performs both finisher and operator work.

By its petition, Petitioner essentially is seeking a separate unit of craft employees. In Burns & Roe Services Corp., 313 NLRB 1307, 1308 (1994), the Board defined a craft unit as a “distinct and homogeneous” unit of journeymen, apprentices, and helpers who are primarily engaged in tasks not performed by others that require substantial craft skills and the use of specialized tools and equipment. The factors the Board considers are formal training or apprenticeship programs, functional integration, overlap of duties, whether work assignments are based on need or made along craft lines, and common interests in wages and other terms and conditions of employment.

Based on the foregoing and the record as a whole, I conclude that Petitioner has failed to establish that the operating engineers and mechanics constitute an appropriate unit. The record fails to disclose that the employees in the proposed unit participated in or completed a traditional apprenticeship program or that they achieved journeyman status in a craft. On the contrary, the record is clear that some, if not most, of the operators learned their skills while on the job. At least four of the Employer’s current operators were previously employed by the Employer as laborers or finishers and worked their way up to the operator job through various levels of jobs, and by learning skills associated with the operator position on the job.

In addition, the record reveals that the Employer does not operate along strict traditional craft designations. It is clear, for example, that operators regularly perform finisher and laborer work. Also, all employees of the Employer, including operators,

operate some equipment, including brooms and small tractors. Other classifications besides operators also operate compaction equipment and back hoes.

The unit proposed by Petitioner also does not constitute a functionally distinct group with common interests separate from the Employer's other employees. All employees of the Employer work alongside one another. In fact, it appears that operators work more closely with other members of their own crews, rather than with other operators. Moreover, operators are not separately supervised. Rather, whether or not crew leaders are supervisors within the meaning of the Act, all employees are commonly supervised. Finally, all employees work the same hours, are eligible for the same benefits (except a few operators where the Employer has made an exception due to membership in Petitioner), and are subject to the same payroll periods.

Under these circumstances, I conclude that the record is insufficient to establish that the employees in the unit sought by Petitioner perform work within the definition of craft employees as defined by the Board, and do not otherwise constitute a unit appropriate for the purposes of collective bargaining. Mariah, Inc., 322 NLRB 586 (1996); Brown & Root Braun, 310 NLRB 633 (1993).

Because Petitioner indicated on the record that it did not wish to proceed to an election in the broader unit should the broader unit be found appropriate, I will dismiss the petition herein. Because I have concluded that the petition should be dismissed, it is unnecessary to determine the supervisory status of Leonard Tandeski or Robert Sorlien.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.⁴

Dated at Minneapolis, Minnesota, this 23rd day of April, 1999.

/s/ Ronald M. Sharp

Ronald M. Sharp, Regional Director
Eighteenth Region
National Labor Relations Board

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420-2900-2901

⁴ Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **May 7, 1999**.